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Apr. 29

CONCORD, N.H.

Admiral C. F. Brinkmann, Director
New Hampshire Civil Defense
State House

Dear Admiral Brinkmann:

In the matter of your file in regard to supplemental agreements with the State of New York attached to your communication of April 17, 1953 and after consultation with Assistant Attorney General of this office who has previously advised you in this matter, I further advise as follows.

Mr. Water's letter of March 24, 1953 by its fourth paragraph suggested that a written opinion of the Attorney General of New York giving express approval of the authority of the New York State Director of Civil Defense to execute binding supplementary agreements should be had rather than just the assurance of "tacit approval" mentioned in Mr. Hennessey's letter of February 27, 1953. I note that such direct opinion has not been received and that only Mr. Hennessey's interpretation of his office's authority is in the file submitted.

laws of New Hampshire, 1949, chapter 304, section 5, subsection V gives to the Governor authority "on behalf of the state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the state." Subsection VI gives the Governor authority to delegate to the State Director "any administrative authority vested in the Governor hereunder."

In performing his duties under the present law the Governor is authorized "to cooperate . . . with other states . . ." and "to further authorize and empower" as stated in the preceding paragraph of this opinion. Under section 3 of chapter 304 the State Director, subject to the direction of the Governor, is authorized to maintain liaison with and cooperate with civil defense agencies and organizations of other states and of the federal government, and "shall have such additional authority, duties, and responsibilities authorized by this Act as may be prescribed by the Governor."

Alvin C. A. Whelan, Director

April 29, 1953

It is my opinion that these provisions authorize delegation of regulatory and discretionary authority. Within the bounds of this State the State Director may, when directed by the Governor, make such plans, orders and regulations in furtherance of the declared policy and prescribed standards laid down by the Legislature as are necessary to carry the law into effect. I am of the opinion also that the Governor has authority in his discretion to authorize the New Hampshire State Director of Civil Defense to negotiate and execute binding operational or implementing agreements between this State and other states under or within the limits of the several Interstate Compacts in effect. (I say this opinion, however, in the case of the Ohio and West Virginia compacts as it seems to me that until Article 3 of those Compacts is clarified their validity is in question.)

Mr. Waters has discussed and considered this matter with me and is in agreement with the opinions herein expressed. We cannot give any valid interpretation to the law of New York but we agree that the establishment of procedures as outlined in Mr. Hennessy's letter of April 21 may be delegated as above stated insofar as New Hampshire is concerned.

Very truly yours,

George F. Nelson
Assistant Attorney General

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Enc.